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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,206	07/17/2000	Ray D. Kanter	RKPA4	8234

7590 02/22/2002

Morgan L Crow
113 Ashburne Glen Lane
Ovilla, TX 75154

EXAMINER	
AHMAD, NASSER	
ART UNIT	PAPER NUMBER
1772	2

DATE MAILED: 02/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-2

Office Action Summary

Application No.	Applicant(s)
09/617,206	Kanter
Examiner	**Art Unit**
Nasser Ahmad	1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____ .

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-20* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuter (4,306,388).

Yuter relates to a carpet assembly comprising a mat, a layer of carpet adhered to the top surface of the mat and a hook-and-loop member attached to the bottom side of the mat to detachably connect the assembly to a floor (col. 6, lines 28-32 and 50-60). The hook and the loop members are adhesively attached to the respective surfaces.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-9, 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (4,522,857) in view of Wentworth (3,616,138).

Higgins relates to a carpet assembly comprising a carpet layer having a coat of polyurethane on its bottom side and a woven material applied to the polyurethane coat (col. 1, lines 42-47). A mat is adhesively adhered to the woven material (col. 1, lines 26-38). The mat is a foam layer having a thickness of 0.1 to 1.0 inches (col. 2, lines 1-2). However, Higgins fails to teach that the mat is a closed cell foam composition. Wentworth discloses a carpet underlay mat

having predominantly closed cell structure to increase its resilience. The mat can be a single sheet or a plurality of sheets joined together. Therefore, it would have been obvious to one having ordinary skill in the art to utilize Wentworth's teaching of using a closed cell foam composition as the underlay mat for a carpet assembly in the invention of Higgins to provide for increased resilience and hence, shock absorbing property.

The aspect of mat thickness being 1 and 1/8 inch or higher would have been obvious based on optimization through routine experimentation.

As for the impact attenuation, it would also have been obvious based on optimization through routine experimentation.

2. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins in view of Wentworth and Emerson (3,577,894).

Higgins and Wentworth, as discussed above, fails to teach that the mat sections are attached together with hook-and-loop fastener affixed at the perimeter edge. Emerson relates to mat sections that one joined together by adhesive tape or the like (col. 2, lines 33-36) to form a continuous mat surface. Therefore it would have been obvious to one having ordinary skill in the art to utilize Emerson's teaching of using adhesive tape as the like to in the invention of Wentworth to join a plurality of mat sections together to form a continuous surface.

Further, use of a hook-and-loop member, instead of adhesive tape, would have been obvious based on functional equivalence of the two types of attachment components.

6. Claims 10-11 are free of the prior art uncovered so far as the decreasing thickness of the foam mat edge of 1 to 12 times the mat thickness is not taught by the prior art.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper time wise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Long*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Onramp*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Torrington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,090,462. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the patent '462 relate to a carpet assembly with shock absorbing properties having the same structure. However, patent '462 fails to claim that the mat has a thickness of not less than 5/8 inch. It would have been an obvious to one having ordinary skill in the art to provide the shock absorbing properties based on optimization through routine experimentation.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 703 308-4424. The examiner can normally be reached on Monday-Thursday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-0661.

NASSER AHMAD
PRIMARY EXAMINER

Ahmad/af
February 21, 2002